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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 102

DENNIS BOREY, RCP  
715 De La Fuente Street  
Monterey Park, California 91754

**FIRST AMENDED ACCUSATION**

Respiratory Care Practitioner License No. 3079,  
Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs ("Board"). This First Amended Accusation supercedes and supplants the original Accusation filed in this matter on April 23, 2008.

2. On or about May 31, 1985, the Board issued Respiratory Care Practitioner License number 3079 to Dennis Borey, RCP (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2009, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise  
2 indicated.

3 4. Section 726 of the Code states:

4 “The commission of any act of sexual abuse, misconduct, or relations with  
5 a patient, client, or customer constitutes unprofessional conduct and grounds for  
6 disciplinary action for any person licensed under this division, under any initiative act  
7 referred to in this division and under Chapter 17 (commencing with Section 9000) of  
8 Division 3

9 . . .”

10 5. Section 3750 of the Code reads:

11 “The board may order the denial, suspension, or revocation of, or the  
12 imposition of probationary conditions upon, a license issued under this chapter, for any of  
13 the following causes:

14 “(f) Negligence in his or her practice as a respiratory care practitioner.

15 “. . .

16 6. Section 3752.7 of the Code reads:

17 “Notwithstanding Section 3750, any proposed decision or decision issued  
18 under this chapter in accordance with the procedures set forth in Chapter 5 (commencing  
19 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that  
20 contains any finding of fact that the licensee or registrant engaged in any act of sexual  
21 contact, as defined in Section 729, with a patient, or has committed an act or been  
22 convicted of a sex offense as defined in Section 44010 of the Education Code, shall  
23 contain an order of revocation. The revocation shall not be stayed by the administrative  
24 law judge. . . .”

25 7. Section 3755 reads as follows:

26 “The board may take action against any respiratory care practitioner who is  
27 charged with unprofessional conduct in administering, or attempting to administer, direct  
28 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,

1 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
2 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
3 monitoring techniques, and violation of any provision of Section 3750. The board may  
4 determine unprofessional conduct involving any and all aspects of respiratory care  
5 performed by anyone licensed as a respiratory care practitioner. Any person who engages  
6 in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be  
7 punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment  
8 for a term not to exceed six months, or by both that fine and imprisonment.”

### 9 **COST RECOVERY**

10 8. Section 3753.5, subdivision (a) of the Code states:

11 “In any order issued in resolution of a disciplinary proceeding before the  
12 board, the board or the administrative law judge may direct any practitioner or applicant  
13 found to have committed a violation or violations of law to pay to the board a sum not to  
14 exceed the costs of the investigation and prosecution of the case.”

15 9. Section 3753.7 of the Code states:

16 "For purposes of the Respiratory Care Practice Act, costs of prosecution  
17 shall include attorney general or other prosecuting attorney fees, expert witness fees, and  
18 other administrative, filing, and service fees."

19 10. Section 3753.1, subdivision (a) of the Code states:

20 "An administrative disciplinary decision imposing terms of probation may include, among  
21 other things, a requirement that the licensee-probationer pay the monetary costs associated with  
22 monitoring the probation."

### 23 **FIRST CAUSE FOR DISCIPLINE**

24 (Sexual Misconduct; Business & Professions §§ 726 and 3752.7)

25 11. Respondent is subject to disciplinary action under Code Section 726. The  
26 circumstances are as follows:

27 12. On or about February 15, 2008 Respondent was working at Pacific Alliance  
28 Medical Center (hospital) in the emergency room. A woman, S.H., presented at the hospital

1 complaining of chest pains. An emergency room doctor, Dr. Villacarlos, ordered that an EKG be  
2 taken and Respondent was instructed to place the electrode pads on S.H.

3           13.     Respondent placed electrode pads on the victim's upper chest area and her  
4 legs. Respondent then advised S.H. that he needed to unzip her pants to facilitate the exam. When  
5 S.H. attempted to unzip her own pants Respondent told her to stop and advised her that he was  
6 going to unzip her pants for her.

7           14.     Respondent then unbuttoned her pants and pulled down her zipper.  
8 Respondent told S.H. to relax and close her eyes. She did not close her eyes.

9           15.     S.H. observed Respondent masturbating his erect penis by placing his hand  
10 inside his crotch area and moving his hand in a rapid and rhythmic motion. Respondent then  
11 positioned himself over S.H. and rested his body-weight on her thighs by using his hands.

12           16.     Respondent next leaned forward, placed his face near her crotch and  
13 smelled.

14           17.     At this point S.H. screamed.

15           18.     Two witnesses, Dr. Villacarlos, and the nurse, Nurse Dizon, heard S.H.  
16 scream "stop" and entered the area by pulling back the curtain.

17           19.     Dr. Villacarlos heard S.H. yell two or three times. When the doctor  
18 responded she observed S.H. crying and saying, "I don't want you to touch me, he was touching  
19 my thigh."

20           20.     Nurse Dizon said that she heard S.H. scream "stop." When she responded  
21 the victim shouted, "He was touching me and smelling me." The nurse observed that S.H.'s pants  
22 were unzipped, halfway down, and she was crying. S.H. also told the nurse that "his penis was  
23 touching my leg."

24           21.     Respondent's actions constitute sexual misconduct with patient S.H.  
25 pursuant to Code Sections 726 and 3752.7.

## 26                           **SECOND CAUSE FOR DISCIPLINE**

27                           (Negligence; Business and Professions Code § 3750(f))

28           21.     Complainant repeats paragraphs twelve (12) through twenty (20) and

1 incorporates them as if fully included herein.

2                   22.     Respondent's conduct constitutes gross negligence in practicing respiratory  
3 care therapy.

4                                   **THIRD CAUSE FOR DISCIPLINE**

5                                   (Unprofessional Conduct; Business and Professions Code §3755)

6                   23.     Complainant repeats paragraphs twelve (12) through twenty (20) and  
7 incorporates them as if fully included herein.

8                   24.     Respondent's conduct constitutes unprofessional conduct in practicing  
9 respiratory care therapy.

10                                   **PRAYER**

11                   **WHEREFORE**, Complainant requests that a hearing be held on the matters herein  
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13                   1.     Revoking Respiratory Care Practitioner License Number 3079, issued to  
14 Dennis Borey, RCP

15                   2.     Ordering him to pay the Board the costs of the investigation and  
16 enforcement of this case, and if placed on probation, the costs of probation monitoring;

17                   3.     Taking such other and further action as deemed necessary and proper.

18                   DATED: June 17, 2008

19  
20  
21                                   Original signed by Liane Zimmerman for: \_\_\_\_\_  
22                                   STEPHANIE NUNEZ  
23                                   Executive Officer  
24                                   Respiratory Care Board of California  
25                                   Department of Consumer Affairs  
26                                   State of California  
27                                   Complainant  
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